

REMARKS

Applicant respectfully requests entry of this Amendment, reconsideration of this application, as amended, and reconsideration of the Final Office Action mailed May 11, 2010. Applicant also respectfully requests a three (3) month extension of time for responding to the May 11, 2010, Final Office Action and authorizes the Commissioner to debit our Deposit Account No. 19-0733 for this extension fee and for any other fees that are not accounted for in these papers but are nevertheless required to maintain the pending status of this application.

A Request for Continued Examination (“RCE”) under 37 C.F.R. § 1.114 also is being filed with this Amendment.

Upon entry of this Amendment, all previous claims will be canceled without prejudice or disclaimer and new claims 53-76 will be pending in this application. These new claims generally track the language from the specification for the various parts of the article of footwear. Accordingly, Applicant respectfully submits that no new matter is included in this Amendment, and no additional claim fees are due as a result of this Amendment.

Applicant further asserts that at least claims 53-62 and 64-73 read on the previously elected species of Figs. 1-3. Dependent claims 63 and 74-76 are provided in the application for rejoinder purposes in the event of the allowance of a generic independent claim.

I. The Office’s Objection to the Drawings is Overcome

In the Final Office Action, the Office objected to the originally presented informal drawings and required formal drawings. Replacement sheets of formal drawings are submitted with this Amendment. Accordingly, Applicant respectfully requests that the Office withdraw this objection.

II. The Office’s Rejection Under 35 U.S.C. § 112 Does Not Apply to New Claims 53-76

In the Final Office Action, the Office rejected claims 34-40, 42, and 49-52 as allegedly failing to particularly point out and distinctly claim the subject matter regarded as the invention. Because these claims are canceled by this Amendment, this rejection is moot. Moreover, in presenting the new claims, Applicant has avoided the terminology that sparked this rejection. Accordingly, Applicant respectfully submits that this issue has been overcome.

III. New Claims 53-76 Patentably Distinguish from the Previously Cited Art

In the Final Office Action, the Office raised various grounds of rejection against the then pending claims based on the following references taken alone or in various combinations: (a) U.S. Patent No. 3,605,292 to Goldblatt (hereinafter “Goldblatt”); (b) U.S. Patent No. 4,177,582 to Ehrlich, Jr. (hereinafter “Ehrlich”); (c) U.S. Patent No. 3,640,006 to Kendrick (hereinafter “Kendrick”); (d) European Patent Publication No. 1,234,516 to Oorei (hereinafter “Oorei”); (e) U.S. Patent No. 5,752,332 to Kataoka, et al. (hereinafter “Kataoka”); (f) U.S. Patent No. 6,854,200 to Hipp, et al. (hereinafter “Hipp”); and (g) U.S. Patent No. 6,122,845 to Menghi (hereinafter “Menghi”). Applicant respectfully asserts that the present claims patentably distinguish from these references, whether considered alone or in combination.

Applicant’s independent claim 53 recites an article of footwear that includes: (a) a sole having a toe part, a ball part extending from the toe part, and an instep-heel part extending from the ball part and (b) an upper instep member engaged with the sole by an adjustable connection. The claim further recites: (a) that the toe part is made of a substantially inflexible material and includes a plurality of spikes extending from a bottom surface thereof, (b) that the ball part is made of a flexible material, and (c) that the instep-heel part is made of a substantially inflexible material. The claimed instep-heel part further includes a heel portion including a first heel side support, a second heel side support, and an end heel support at a rear heel location, wherein a first opening is defined through the heel portion by the first heel side support and the end heel support and a second opening is defined through the heel portion by the second heel side support and the end heel support. Additionally, the claim further recites that the upper instep member is located such that a foot-receiving opening for the article of footwear is defined between the upper instep member and the heel portion of the instep-heel part, and that the upper instep member does not extend over the ball part or the toe part of the sole such that a top surface of the sole remains exposed at the ball part and the toe part. Applicant respectfully asserts that this claimed subject matter patentably distinguishes from the art of record.

With respect to Goldblatt, Applicant respectfully asserts that Goldblatt does not disclose or suggest at least the sole flexibility features and the heel construction features recited in claim 53.

With respect to Ehrlich, Applicant respectfully asserts that Ehrlich does not disclose or suggest at least the heel construction features and the upper instep member features recited in claim 53.

With respect to Kendrick, Applicant respectfully asserts that Kendrick does not disclose or suggest at least the sole flexibility features, the heel construction features, and the upper instep member features recited in claim 53.

With respect to Oorei, Applicant respectfully asserts that Oorei does not disclose or suggest at least the heel construction features and the upper instep member features recited in claim 53.

With respect to Kataoka, Applicant respectfully asserts that Kataoka does not disclose or suggest at least the sole flexibility features, the heel construction features, and the upper instep member features recited in claim 53.

With respect to Hipp, Applicant respectfully asserts that Hipp does not disclose or suggest at least the sole flexibility features and the heel construction features recited in claim 53.

With respect to Menghi, Applicant respectfully asserts that Menghi does not disclose or suggest at least the sole flexibility features and the heel construction features recited in claim 53.

Applicant's independent claim 64 recites an article of footwear that consists essentially of: (a) a sole having a toe part, a ball part extending from the toe part, and an instep-heel part extending from the ball part and (b) an upper instep member engaged with the sole by an adjustable connection. The claimed toe part includes a plurality of spikes extending from a bottom surface thereof. The claimed instep-heel part includes a heel portion having a first heel side support, a second heel side support, and an end heel support at a rear heel location, wherein a first opening is defined through the heel portion by the first heel side support and the end heel support and a second opening is defined through the heel portion by the second heel side support and the end heel support. Furthermore, the claimed upper instep member is located such that a foot-receiving opening for the article of footwear is provided between the upper instep member and the heel portion of the instep-heel part, and wherein the upper instep member does not extend over the ball part or the toe part of the sole. Applicant respectfully asserts that this claimed subject matter patentably distinguishes from the art of record.

With respect to Goldblatt, Applicant respectfully asserts that Goldblatt does not disclose or suggest at least the heel construction features recited in claim 64. Moreover, Applicant respectfully asserts that the Goldblatt structure includes other essential elements, such as the heel strap 24.

With respect to Ehrlich, Applicant respectfully asserts that Ehrlich does not disclose or suggest at least the heel construction features and the upper instep member features recited in claim 64.

With respect to Kendrick, Applicant respectfully asserts that Kendrick does not disclose or suggest at least the sole flexibility features, the heel construction features, and the upper instep member features recited in claim 64. Moreover, Applicant respectfully asserts that the Kendrick structure includes other essential elements, such as the straps 18.

With respect to Oorei, Applicant respectfully asserts that Oorei does not disclose or suggest at least the heel construction features and the upper instep member features recited in claim 64.

With respect to Kataoka, Applicant respectfully asserts that Kataoka does not disclose or suggest at least the heel construction features and the upper instep member features recited in claim 64.

With respect to Hipp, Applicant respectfully asserts that Hipp does not disclose or suggest at least the sole features and the heel construction features recited in claim 64.

With respect to Menghi, Applicant respectfully asserts that Menghi does not disclose or suggest at least the heel construction features recited in claim 64. Moreover, Applicant respectfully asserts that the Menghi structure includes other essential elements, like the strap over the ball of the foot area and the enclosed toe area.

Moreover, Applicant respectfully asserts that the art of record fails to disclose or suggest a bottom surface opening in an instep-heel part of a sole of the type recited in dependent claims 54 and 65.

In view of the foregoing, Applicant respectfully asserts that claims 53 through 76 patentably distinguish over the art of record. Allowance of these new claims is earnestly solicited.

IV. Conclusion

Nothing in this Amendment should be construed as an admission that Applicant agrees with or acquiesces in the various grounds of rejection that were raised by the Office in the May 11, 2010, Final Office Action. Rather, by this Amendment, Applicant has presented new claims in an effort to expedite prosecution and to facilitate the allowance of this application. The claim changes made in this Amendment are presented without prejudice or disclaimer, and Applicant reserves all rights with respect to the originally and/or previously claimed subject matter, including the right to pursue claims of the same or similar scope in the future (e.g., in a continuing application).

All rejections and objections have been fully addressed. Applicant respectfully submits that this application is in condition for allowance and respectfully solicits notification of the same.

Respectfully submitted,

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